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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/942,023

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Toshiaki Sasamori

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04/28/2006

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EXAMINER

QURESHI, AFSAR M

ART UNIT

PAPER NUMBER

2616

DATE MAILED: 04/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/942,023	<b>Applicant(s)</b> SASAMORI ET AL.	
	<b>Examiner</b> Afsar M. Qureshi	<b>Art Unit</b> 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6, 8, 13 and 15 is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 9-12 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/24/04, 1/14/04, 5/15/03</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This action is in response to RCE (2/16/2006) and amendments/Remarks received on 1/13/2006.

### ***Response to Arguments***

2. (a) In response to applicant's arguments, the recitation in claims 2, 5, and 7 has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

(b) In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

(c) Applicant's arguments with respect to claims 6 and 8 have been fully considered and are persuasive. The rejection of claims 6, 8, 13 and 15 has been withdrawn.

(d) Applicant's arguments with respect to claims 1, 2, 3, 5, 7 and dependent claims thereon are not persuasive. The Examiner maintains the reasons for rejection as underlined in the Final action dated 10/18/2005.

***Claim Rejections - 35 USC § 102.***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 7, 9-12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Sriram (U.S. Patent No. 5,463,620).

Regarding claims 1 and 3, Sriram teaches a bandwidth allocation, transmission scheduling and congestion avoidance system. Figure 1 illustrates a plurality of nodes 10, 12...18 operating on a data communications network. The network includes a plurality of queues (see column 3, lines 47-49 and figure 5) that operate to distribute data via a queuing mechanism that provides both real and non-real time data transmissions (See Type 1A and Type 2 data described in columns 3-4). The operation includes defining a

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predetermined time cycle  $D_c$  used to distribute data held in the queues for both real time and non-real time data distribution, where the data is distributed from a real time data queue during a first portion of the time cycle  $D_c$  and the remaining portion of the time cycle  $D_c$  is used to distribute non-real time communication data (see column 5, lines 65-67 and column 6, lines 10-24). The time cycle may be used repeatedly (see column 1, lines 30-32).

Additionally, Sriram teaches a low priority (see 74 of figure 7) and a high priority data transmission (i.e. Delay-Sensitive Non-Isochronous High Bandwidth Services) (see column 4, lines 10-26).

Regarding claims 2, 4, 5 and 7, Sriram teaches, in addition to the above described features, establishing a cycle time  $D_c$  by a dynamic time slice server DTS 48, and which is referenced in each communication cycle (see figure 6). Also, measuring the amount of data volume by allotting a specific time slice  $T_n$  to the data queue containing the specified type of data and selecting a specified number of cells from each queue (see column 6, lines 11-23).

Additionally, Sriram teaches a dynamic time slice server that operates to divide the amount of traffic volume to be transferred (see figure 5), the volume consists of the data separated by bandwidth requirements (e.g. low bandwidth services...delay insensitive HBS).

Regarding claims 9-12 and 14 Sriram teaches a cycle length used to allocate bandwidth for a data transmission (see 92 of figure 10).

#### ***Allowable Subject Matter***

4. Claims 6, 8, 13 and 15 are allowed over the prior art of record.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Afsar M. Qureshi whose telephone number is (571) 272 3178. The examiner can normally be reached on 9 hrs. flexible.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar can be reached on (571) 272 7488. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



4/27/2006

**AFSAR QURESHI  
PRIMARY EXAMINER**